HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 1925 Of 2003 (SS)

Iqbal Hussain & another vs. Sr. Regional Manager & another

Approved for reporting.

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~~Not approved for reporting~~

Date of decision. 18.12.2003

Initial of Judge

Lodge No.729 of 2003

HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No…… of 2003 (SS)

Iqbal Hussain & another ……. Petitioner

Versus

Sr. Regional Manager, F.C.I. & another ..…… Respondents

Sri Rakesh Thapliyal, Advocate for the petitioners
Sri B.D. Upadhyaya, Advocate for the respondents.

Dated: 18.12.2003

Hon'ble Rajesh Tandon, J.

By the present writ petition the petitioners have prayed for the issue of a writ, order or direction in the nature of certiorari quashing the orders dated 17.9.2003, annexure 5 & 6 to the writ petition.

Briefly stated that facts giving rise to the present writ petition are that petitioner no.1 at present is posted as Technical Assistant

Grade –I and the petitioner no.2 is at present posted as Technical Assistant Grade –II under the District Office of Food Corporation of India, Haldwani. The petitioners have stated that by the Office Memos dated 9.11.2001 it was proposed to take action against the petitioners under Rule 16 of C.C.S. (C.C.A.) Rules 1965 read with section 60 of FCI (Staff Regulation) Rule 1971. In the both Office Memos there were allegations of misconduct and misbehavior against the petitioners. The petitioners submitted reply of the office memos on 20.12.2001. Respondents no.1 passed orders of penalty on 179.2003 against the petitioners, hence the writ petition.

The petitioners have stated that the impugned orders have been passed without affording opportunity to them for being heard. It has also been argued by the petitioners that respondent no.1 has no jurisdiction to pass such order against the petitioners. Petitioners have also challenged the charges levelled against them on the ground.

The respondents has raised a preliminary objection that against the order dated 17.4.2003, appeal lies before the higher authorities as contained under Rule 68 of FCI (Staff Regulation). Rule 68 reads as under:

Orders against which appeals lie:

Subject to the provisions of Regulation 67, an employee of the Corporation may prefer an appeal against all or any of the following orders, namely:

(i) ……

(ii) *an order imposing any of the penalties specified in Regulation 54 whether made by the disciplinary authority or by any appellate or reviewing authority;*

The authorities concerned to whom appeal lies have been mentioned in Appendix II and that lies before the Zonal Manager.

In view of the aforesaid facts and circumstances the petitioners will be at liberty to challenge the order before the appellate authority including the question of subjudice.

The petitioners have pointed out that limitation for filing the appeal is 45 days. However, the petitioners shall to file the appeal within three weeks after obtaining of the certified copy of the order.

If the appeal is preferred by the petitioner the same shall be treated within limitation.

Since alternative remedy of appeal is available to the petitioner, no petition under Article 226 of the Constitution of India is maintainable.

The appellate authority is directed to decide the appeal within three months after filing thereof. The orders dated 17.9.2003 passed by the respondent no.1 shall remain in abeyance till the disposal of the appeal.

Subject to the aforesaid observations, the writ petition is dismissed. No order as to costs.

18.12.2003 **(Rajesh Tandon, J.)**
*Dhyani